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**BROOKDALE SENIOR LIVING INC. and
 BROOKDALE SENIOR LIVING COMMUNITIES,
 INC.**

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

STACIA STINER, et al.,)	Case No. 4:17-cv-03962-HSG
)	
Plaintiffs,)	PARTIES' STIPULATION AND
)	ORDER RE CLARIFICATION OF
v.)	SUMMARY JUDGMENT ORDER
)	
BROOKDALE SENIOR LIVING INC., et al.)	Judge: Hon. Haywood S. Gilliam, Jr.
)	
Defendants.)	
)	
)	
)	

1 Plaintiffs and Defendants (collectively, the “Parties”), by their undersigned counsel, respectfully
2 stipulate as follows:

3 WHEREAS, the parties filed cross motions for summary judgment on September 5, 2024 [ECF
4 Nos. 856, 861].

5 WHEREAS, Defendants argued in their motion for summary judgment [ECF No. 861] that, *inter*
6 *alia*, retroactive application of the ADA to Defendants’ assisted living communities would result in a
7 violation of due process. Defendants raised the same argument in their opposition to Plaintiffs’ motion for
8 summary judgment [ECF No. 885]. Plaintiffs opposed Defendants’ due process argument in their
9 Opposition to Defendants’ motion for summary judgment and their Reply in support of Plaintiffs’ motion
10 for summary judgment, as well as pretrial filings. [ECF Nos. 884, 902].

11 WHEREAS, Defendants also argued in their motion for summary judgment that the injunctive
12 relief claims of the Wheelchair and Scooter Users Subclass were mooted by a recent change to the
13 transportation policy underlying the claims of this subclass. Defendants raised the same argument in their
14 opposition to Plaintiffs’ motion for summary judgment. Plaintiffs opposed Defendants’ mootness
15 argument.

16 WHEREAS, the Court issued an omnibus order on the parties’ cross motions for summary
17 judgment on December 13, 2024 [ECF No. 978] (the “MSJ Order”).

18 WHEREAS, in the MSJ Order, the Court held that “[the] issue of [whether Brookdale’s assisted
19 living facilities are places of public accommodation] has already been extensively litigated, nothing
20 relevant has changed, and Brookdale’s arguments do not undermine the Court’s prior conclusions.” MSJ
21 Order 7, n. 4. The Court did not expressly address Defendants’ due process argument or the case law the
22 parties cited in support of and against the argument. Defendants were therefore unclear as to whether they
23 still needed to raise their due process argument at trial to preserve their appellate rights or whether the
24 Court had entered summary judgment against them on the issue of due process.

25 WHEREAS, in the MSJ Order, the Court addressed Defendants’ mootness argument by stating
26 that “mootness is not a basis to grant summary judgment as to Plaintiffs’ Fleet Safety Policy claims.” MSJ
27 Order at 14. Based on this language, Defendants were unclear to whether the Court held that Defendants’
28

1 mootness argument was insufficient to warrant summary judgment in Defendants' favor such that
2 Defendants still needed to raise the issue at trial to preserve their appellate rights or whether the Court had
3 entered final judgment against them on the issue of mootness.

4 WHEREAS, during the January 14, 2025 Pretrial Conference, the Court addressed these issues by
5 stating that it had considered the parties' briefs on these issue and ruled on and rejected both Defendants'
6 due process argument and Defendants' mootness argument with finality and that these were not issues to
7 be raised at trial.

8 WHEREAS, to ensure the record is clear as to the Court's ruling, the Court ordered Defendants to
9 present something to the Court such that it could clarify and close the record on these issues and ensure
10 that Defendants' appellate positions on these issues would be preserved.

11 WHEREAS, to accomplish that objective, Defendants initially contemplated filing a motion for
12 clarification. However, upon conferring with Plaintiffs, it was apparent that the parties did not need to
13 present disputed briefing to the Court as they did not have any dispute about the nature of the MSJ Order
14 following the Court's direction at the January 14, 2025 Pretrial Conference.

15 WHEREAS, given the lack of dispute, the parties discussed and agreed that a stipulation and
16 proposed order would be sufficient to clarify the record and preserve their respective positions for appeal.

17 WHEREAS, for the foregoing reasons, the parties agree that the Court granted summary judgment
18 for Plaintiffs on both Defendants' due process argument and Defendants' mootness argument and that
19 these issues are now preserved for appeal without the need to present evidence on them at trial.

20 THEREFORE, IT IS HEREBY STIPULATED, subject to the approval of the Court, that the Court
21 entered summary judgment against Defendants on both Defendants' due process argument and on
22 Defendants' mootness argument and that these issues are preserved for appeal without the need to present
23 evidence on them at trial.

24
25 IT IS SO STIPULATED
26
27
28

1 DATED: January 17, 2025

MOORE & LEE, P.C.,

3 /s/ Erica Rutner
4 Erica Rutner
5 Attorneys for Defendants

6 DATED: January 17, 2025

ROSEN BIEN GALVAN & GRUNFELD LLP

7 /s/ Jenny S. Yelin
8 Jenny S. Yelin
9 Attorneys for Plaintiffs and the Certified Classes

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11
12
13 **ATTORNEY ATTESTATION**

14 Pursuant to Local Rule 5-1(i)(3), I attest that all other signatures listed, in whose behalf this filing
15 is submitted, concur in the filing's content and have authorized the filing.

16
17 /s/ Erica Rutner
18 Erica Rutner

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on January 17, 2025, I electronically filed the foregoing document with the
21 Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all
22 CM/ECF participants.

23
24 /s/ Erica Rutner
25 Erica Rutner


ORDER

Pursuant to Stipulation, and for good cause shown, the Parties Stipulation is GRANTED.

The Court clarifies its December 13, 2024 Order [ECF No. 978] and states that it has entered summary judgment against Defendants on both Defendants' due process argument and on Defendants' mootness argument and these issues are preserved for appeal without the need to present evidence on them at trial.

IT IS SO ORDERED.

DATED: 1/17/2025


HON. HAYWOOD S. GILLIAM, JR.
United States District Judge